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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,782	08/26/2003	Pierre Rondeau	RP-00128-US10	2064

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EXAMINER

FLEMING, FAYE M

ART UNIT

PAPER NUMBER

3616

DATE MAILED: 01/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/647,782	RONDEAU ET AL.
	Examiner Faye M. Fleming	Art Unit 3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 15 November 2004.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 2-23 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 2-23 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2-23 are rejected under 35 U.S.C. 101 because the claim language "...the standard driver is seated in a standard driver position defined as the standard driver straddling and being seated on the seat on the main seat portion with its feet disposed on the driver's footrests and its hands disposed on the handlebars, and the standard passenger is seated in a standard passenger position defined as the standard passenger straddling and being seated on the seat on the secondary seat portion with its feet disposed on the passenger's footrests and its hands disposed on the grab handles..." is improper because the passenger is a non-statutory subject. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 2-20, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitao, et al. (6,296,163) in view of Katsuoka (4,527,831).

Kitao teaches an ATV comprising a frame; only four wheels suspended from the frame, two of which are front wheels and two which are rear wheels, the front wheels defining a front axis and the rear wheels defining a rear axis; a power unit for driving at least one of the wheels disposed on the frame; a straddle-type seat supported by the frame including a main seat portion and a secondary seat portion; a steering member connected to the frame comprising a handlebar; a pair of driver's footrests 37 and a pair of passenger's footrest 37, each disposed on the frame, as shown in figures 1, 2 and 4. The main seat portion includes a main supporting range. The secondary seat portion includes a secondary supporting range, and the secondary supporting range is elevated relative to the main supporting range. An open space is forward of the main seat portion and an open space is between the main seat portion and the secondary seat portion. With respect to the wheelbase, it would have been an obvious matter of design choice to have the wheelbase a specific size and/or a size within a specific range, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art, as well as, discovering the optimum or workable ranges involves only routine skill in the art. With respect to the main supporting range, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the main supporting range positioned rearwardly of the front axis by a percentage within a range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges

involves only routine skill in the art. With respect to the secondary supporting range, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the secondary supporting range elevated relative to the main supporting range within a specific range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. With respect to the ratio of a horizontal distance between a center of gravity of the power unit and the rear axis to the wheelbase, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have ratio within a specific range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. With respect to the main and secondary supporting ranges, it would have been an obvious matter of design choice to have the supporting ranges longitudinal separated by a specific distance, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. With respect to the straddle seat, it would have been an obvious matter of design choice to have the straddle seat a specific longitudinal length, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. With respect to the tire's air pressure, it would have been an obvious matter of design choice to have a specific air pressure,

since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Kitao teaches the claimed invention except for a pair of passenger grab handles. Katsuoka teaches a pair of passenger grab handles disposed on right and left side of the secondary seat portion, as shown in figures 3 and 4. Based on the teachings of Katsuoka, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ATV of Kitao to have passenger grab handles to provide balance and support for the passenger of the ATV.

4. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kitao, et al (6,296,163) in view of Katsuoka, further in view of Pestotnik (6,182,784).

Kitao in view of Katsuoka teaches the claimed invention except for a drive shaft. Pestotnik teaches an all-terrain vehicle comprising a drive shaft 106 operatively interconnecting the power unit with at least one of the rear wheel. Based on the teachings of Pestotnik, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ATV the combination of Kitao and Katsuoka to have a drive shaft to provide power to the wheels.

***Response to Arguments***

5. Applicant's arguments with respect to claims 2-21 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye M. Fleming whose telephone number is (703) 305-0209. The examiner can normally be reached on M-F (9:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (703) 308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Faya M. Fleming  
Primary Examiner  
Art Unit 3616  
01/18/05

fmf